National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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<u>CASES SUMMARIZED</u> VISIT <u>WWW.NLRB.GOV</u> FULL TEXT

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North Hills Office Services, Inc. (29-CA-25715, et al.; 344 NLRB No. 134) Woodbury, NY July 13, 2005. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(1) of the Act in various respects, including when: field supervisor José Herrera, during the first week of May 2003, directed employee Pilar Gutierrez not to speak with Union organizers; Vice President Tom Pellegrino, during a mandatory meeting on May 8, 2003, coercively interrogated employees about their Union activities, solicited employee grievances, and promised employees benefits for not supporting Service Employees Local 32B-J; and Herrera and Operations Manager Eddie Matos demanded that employee José Labrador provide them with copies of his birth certification and social security card on June 12, 2003. [HTML] [PDF]

The Board also agreed with the judge that Respondent violated Section 8(a)(3) and (1) when: it discharged Guitierrez on July 1, 2003; Herrera issued Guevara a written warning on June 2, 2003 regarding his work performance and discharged him on July 3, 2003; Matos issued Labrador a written warning for being late to work on or about June 23, 2003; Herrera issued Labrador a written warning on June 24, 2003 for talking to co-workers while standing outside of the supply closet and suspending him later that evening; and when it issued Labrador a written warning on August 1, 2003.

The Board reversed the unfair labor practice finding made by the judge regarding the Respondent's alleged reduction of its July 1 discharge of Gutierrez to a verbal warning. The judge found that Matos' statement about having to give Gutierrez notices or warnings before he could discharge her indicated to Gutierrez that her discharge was being reduced to a verbal warning. The Board disagreed and held that Matos' restatement of the Respondent's discipline policies cannot reasonably be construed as a verbal warning in light of Pellegrino's contemporaneous statement to Gutierrez that "there was nothing against her." Accordingly, the Board dismissed this complaint allegation.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Service Employees Local 32B-J; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Brooklyn, April 20-22 and May 18-19, 2004. Adm. Law Judge Howard Edelman issued his decision Sept. 15, 2004.

Service Employees Local 1 (13-CA-41636; 344 NLRB No. 135) Chicago, IL July 13, 2005. The Board reversed the administrative law judge's dismissal of the complaint allegation that the Respondent Union violated Section 8(a)(1) of the Act by discharging its employee, business representative Remzi Jaos, for complaining about and seeking change in the Union's newly-implemented system for assigning work to its business representatives. [HTML] [PDF]

The judge found that the Union lawfully discharged Jaos under the balancing test articulated in *Operating Engineers Local 370*, 341 NLRB No. 114 (2004). In that case, the Board held that, where a union-employer discharges a paid employee in a key position for activity that is critical of the union but also protected by Section 7, the employee's right to engage in such activity must be balanced against the union's legitimate interest in ensuring

loyalty, support, and cooperation. Here, while the judge found that Jaos' activity regarding the new assignment system was protected by Section 7, and that the Union discharged Jaos because of his protected activity, he nevertheless determined that Jaos' discharge did not violate the Act because the Union's legitimate countervailing interest in administering its affairs in the manner it deemed most effective outweighed Jaos' Section 7 rights.

Although agreeing with the judge that the *Operating Engineers Local 370* balancing framework applies here, the Board found, contrary to the judge, that the balance favors Jaos' Section 7 interest over the Union's interest. It determined that Jaos' strong Section 7 interest in protesting his and his colleagues' working conditions was not outweighed by the Union's legitimate interest in the cooperation of its employees with its policies and that the Union violated Section 8(a)(1) by discharging Jaos because of his Section 7 activity.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Remzi Jaos, an Individual; complaint alleged violation of Section 8(a)(1). Hearing at Chicago on Oct. 20, 2004. Adm. Law Judge Arthur J. Amchan issued his decision Dec. 28, 2004.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

United Parcel Service of America, Inc. (an Individual) Tempe, AZ July 8, 2005. 28-CA-19582; JD(SF)-50-05, Judge Gregory Z. Meyerson.

United States Postal Service (an Individual) Destin, FL July 13, 2005. 15-CA-17506(P); JD(ATL)-29-05, Judge Michael A. Marcionese.

Bayview Chiropractic, Inc. (an Individual) Acme, MI July 14, 2005. 7-CA-47969; JD-58-05, Judge George Alemán.

Furniture Direct, Inc. d/b/a EMES Bedding (Teamsters Local 837) Philadelphia, PA July 14, 2005. 4-CA-33172, 33602; JD-59-05, Judge Eric M. Fine.

Healthcare Services Group, Inc. (Steelworkers Local 9021) Pleasant Grove, AL July 14, 2005. 10-CA-34108; JD(ATL)-30-05, Judge Margaret G. Brakebusch.

Sterling Stamping Co. (Auto Workers Local 174) Brighton, MI July 14, 2005. 7-CA-48422; JD(NY)-29-05, Judge Joel P. Biblowitz.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Brueckner Construction, Inc., Chicago, IL, 13-RD-2490, July 15, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Voca of West Virginia A Rescare, Inc. Co., Cincinnati, OH, 9-RC-17983, July 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

Vesuvio Foods Co., Edison, NJ, 22-RC-12591, July 13, 2005 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND DIRECTION OF SECOND ELECTION

My Electrician Electrical Contractors Inc, Chester, MD, 5-RC-15860, July 13, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

341 Jordan Lane Operating Co. II, LLC d/b/a Wethersfield Health Care Center, Wethersfield, CT, 34-RC-2126, July 14, 2005 (Chairman Battista and Members Liebman and Schaumber)

HRVW Huntington, Inc., d/b/a Heritage Center, Huntington, WV, 9-RC-17981, July 14, 2005 (Chairman Battista and Members Liebman and Schaumber)

Miscellaneous Board Orders

ORDER [denying Employer's request for reconsideration and its request for certain directives to the Region]

Atlas Mechanical, Inc., Las Vegas, NV, 28-RC-6374, July 12, 2005

ORDER [granting Employer's request for special permission to appeal from Regional Director determination to conduct the election by mail ballot and denying appeal on the merits]

Caring People, Inc., Teaneck, NJ, 22-RC-12621, July 14, 2005 (Chairman Battista and Members Liebman and Schaumber)
